

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Billy W. & Mary Seward)	
	Ward 81, Block 12, Parcel 9)	
	Residential Property)	Shelby County
	Tax year 2006)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$44,600	\$200,000	\$244,600	\$61,150

On July 31, 2006, the State Board of Equalization ("State Board") received an appeal on behalf of the property owners. The property in question was not appealed to the Shelby County Board of Equalization ("county board") during its regular annual session.

The undersigned administrative judge conducted a hearing of this matter on December 14, 2006 in Memphis. The taxpayers were represented at the hearing by their son, attorney Daniel A. Seward. Legal advisor John Zelinka and staff appraiser Ronald Palmer appeared on behalf of the Shelby County Assessor of Property.

After addressing the preliminary jurisdictional issue, the administrative judge took that question under advisement and heard testimony concerning the value of the subject property.

Findings of Fact and Conclusions of Law

This appeal stems from the 2005 reappraisal of a single-family residence located at 2121 Abergeldie Drive in Memphis. On or about March 11, 2005, the Assessor's office sent notice of the reappraised value of the subject property (\$244,600) to the appellants Billy W. and Mary Seward at this address. A copy of that notice, admitted as Exhibit #1, is attached to this initial order.

Several days later, Ms. Seward requested an "informal review" of the increased assessment by telephoning the Assessor's office. According to her testimony, she was told that the Assessor would "send somebody out" to her home to check the accuracy of the appraisal. Not having seen any such representative within one week, Ms. Seward called back to inquire about the status of the informal review. The response was that the Assessor's office stood by the current appraisal. When Ms. Seward protested, she was advised to "appeal it."

The reappraisal notice had stated that the property owners "will receive a written decision of the review's outcome prior to the (county board's) appeal acceptance time period." Apparently on the assumption that she and her husband could not appear before the county

board without such a decision, Ms. Seward made “several” additional telephone calls to the Assessor’s office over an extended period. She denied ever having received written notification of the result of the informal review.

Meanwhile, as indicated in the reappraisal notice, the county board’s regular session for tax year 2005 ended on July 29th – without any formal complaint pursuant to Tenn. Code Ann. section 67-5-1407 having been filed by the Seward’s.¹ In 2006, the valuation of the subject property remained the same; hence the Assessor was not required by Tenn. Code Ann. section 67-5-508 to send an assessment change notice to the property owners.² Once again, they failed to petition the county board for relief before the prescribed deadline (June 29th). This appeal to the State Board ensued.

Complaints and appeals to the State Board are authorized by Tenn. Code Ann. section 67-5-1412; however, subsection (b) of that section provides (in relevant part) that:

- (1) The taxpayer or owner must first make complaint and appeal to the local board of equalization unless he shall not have been duly notified by the assessor of an **increase in his assessment or change in classification** as provided for in section 67-5-508. [Emphasis added.]

But in 1991, the General Assembly enacted an amendment which affords a taxpayer the opportunity for a hearing to demonstrate “reasonable cause” for failure to meet this requirement. The State Board may accept an appeal under this provision up to March 1 of the year following the tax year in dispute. Tenn. Code Ann. section 67-5-1412(e).

The Tennessee Attorney General has opined that “[t]he requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization, like the time deadline for filing an appeal, is a jurisdictional prerequisite which cannot be waived by the consent of the parties.” Tenn. Atty. Gen. Op. 92-62 (October 8, 1992), p. 10.

A property owner who is aggrieved by an assessment change in a year of reappraisal is certainly entitled under Tenn. Code Ann. section 67-5-1601(e) to an “informal hearing” of his or her complaint. However, that statute does not categorically mandate written notice of the assessor’s decision upon an informal review. The law merely requires that:

Written notice of **any action taken** as a result of such hearings shall be sent at least ten (10) days prior to the county board adjournment. [Emphasis added.]

Well in advance of the county board’s regular session for tax year 2005, Ms. Seward was informed – albeit not in writing – that the Assessor’s office would not adjust the assessment

¹The 2005 taxes on the subject property have been paid in full.

²Presumably, however, the Assessor’s office did cause to be published in a local newspaper of general circulation a notice containing the information specified in Tenn. Code Ann. section 67-5-508(a)(2) – including the deadline for appeal to the county board in 2006.

of the subject property. Further, the reappraisal notice had emphasized, “[t]he Informal Review is not an appeal.”

Arguably, despite this prominent admonition, non-receipt of the “written decision” promised in the reappraisal notice might have excused the appellants’ failure to make complaint to the county board in tax year 2005. But the administrative judge cannot accept this explanation for the same omission in tax year 2006. By then, the taxpayers’ plight must be attributed mostly to their own ignorance of the law and the proper administrative remedy. By her own admission, Ms. Seward “didn’t even know that I could appeal to the county,” and “wasn’t sure what I was supposed to do.”

The Assessment Appeals Commission long ago proclaimed that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the “reasonable cause” provisions to waive these requirements except where the failure to meet them is due to **illness or other circumstance beyond the taxpayer’s control**...[Emphasis added.]

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), pp. 2—3.

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

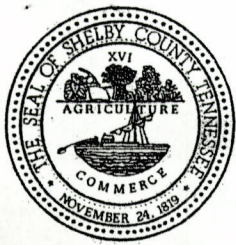
ENTERED this 22nd day of January, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Daniel A. Seward, Esq.
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

SEWARD.DOC



Rita Clark
Shelby County Assessor of Property
1075 Mullins Station Road
Memphis, Tennessee 38134



*****AUTO**5-DIGIT 38119
T 95 100 56743
SEWARD BILLY W & MARY
2121 ABERGELDIE DR
MEMPHIS, TN 38119-6302

Reappraisal is required by State law to update all real property values to reflect **fair market value**. If you have questions about this appraisal or have documentation to support a different value from the one shown below, contact the:

Assessor's Answer Center

Web site: www.assessor.shelby.tn.us

Phone: 901-379-7333

Monday through Friday between 8:00 a.m. and 4:30 p.m.

Ex. 1
PL

Notice of Property Reappraisal

Notice Date: March 11, 2005

Parcel ID Number		Property Location	Map Number
081012 00009		2121 ABERGELDIE DR	4:00906B01
Subdivision Name		Lot #	Questions To Assessor By:
BALMORAL ESTATES BLK C 1		0 19	April 11, 2005
Current Classification		Current Market Appraisal	Assessed Value at
Residential		\$244,600	25% is \$61,150
Previous Classification		Previous Market Appraisal	Previous Assessed Value at
Residential		\$234,400	25% is \$58,600
Greenbelt Information			
Previous GB Appraisal	Previous GB Assessment	Current GB Appraisal	Current GB Assessment

Reappraisal: Why it's needed.

The State of Tennessee requires the Assessor to periodically update all real property values in Shelby County to reflect **fair market value**. Shelby County is on a four-year Reappraisal cycle. Reappraisal eliminates inequities that are created over time by changes in the real estate market and ensures fairness and equity for all property owners. A property's fair market value can increase or decrease over a period of time. If the Assessor did not periodically reappraise, some property owners would pay too much in property taxes while others would pay too little.

What is "Fair Market Value?"

Fair Market Value is the price for a property that a willing and informed buyer and seller would agree upon under usual and ordinary circumstances. It is the most probable price a property would bring if exposed to the open market for a reasonable period of time.

State law protects property owners during Reappraisal years.

State law protects property owners from paying more than their fair share of property taxes because a Reappraisal has occurred. It requires Shelby County Government to adjust the tax rate to a level that would bring in the same amount of revenue as before Reappraisal, excluding the prior tax year's new construction growth. This is called the "certified tax rate," and it prevents local government from experiencing a financial "windfall" in Reappraisal years at the expense of property owners.

Important Information on the Back of this Notice

How are Reappraisal values established?

Skilled and professionally trained appraisers analyze current market conditions (determined by sales in the immediate area over the past three years) and construction costs according to accepted appraisal practices to ensure that fair market value is achieved. With buyers and sellers in the market place determining market value, our appraisers are comparing these sales to properties of similar size, age, location and description to complete the appraisal process and ensure that your Reappraisal value reflects current market conditions as of January 1, 2005.

What if you have questions or do not agree with your Reappraisal value?

If you agree that your new appraisal represents the current market value of your property, **you do not have to do anything**. However, if you have a concern regarding your appraisal or classification and do not agree with the Assessor's value, you should contact the Assessor's Answer Center and request an **Informal Review** before the date listed under "Questions to Assessor By."

What is the Informal Review process?

The Informal Review is not an appeal. It is an opportunity for property owners to share information with the Assessor's Office in order for their property values to reflect fair market value.

When you contact the Assessor's Answer Center and request an Informal Review, staff members will describe how your Reappraisal value was established by going over the property's important characteristics, such as: location, square footage (total living area), age (year of construction), quality of construction and its amenities such as bathroom count, garage or carport features and other structures that exist on the property. In most cases, the Assessor's staff will also provide you with the comparable sales that were used in establishing your property's Reappraisal value. The staff member will initiate your Informal Review by recording your questions and concerns regarding your Reappraisal value and forward the Informal Review to a Residential Appraiser to perform an analysis using the information you provided. In some cases, the Appraiser may need to telephone you for additional information or to request a field inspection to ensure all property characteristics are accurate.

There are three ways to initiate an Informal Review:

1. The fastest and most convenient way to initiate an Informal Review is through the Assessor's Web site: **www.assessor.shelby.tn.us** and complete the **Online Informal Review form**.
2. Call the Assessor's Answer Center at **901-379-7333**.
3. Visit one of the Assessor's two convenient locations: **East - 1075 Mullins Station Road**
Downtown - 160 N. Main, Ste 600

After a careful analysis of your Informal Review, you will receive a written decision of the review's outcome prior to the Shelby County Board of Equalization's (SCBoE) appeal acceptance time period. For those property owners who disagree with the results of their Informal Review, they may file an appeal to the SCBoE. The SCBoE will accept 2005 appeals beginning May 1, 2005 until the end of its regular session on July 29, 2005. Failure to file an appeal may result in the assessment becoming final without further rights to appeal. For more information on the appeals process, please contact the SCBoE by calling 901-379-7160.

What information should I provide when requesting an Informal Review?

To assist in the Informal Review process, you should submit documentation that supports your opinion of value of the property in question. Examples of such documentation include:

- Sales prices of similar properties in the immediate area within the last three years.
- Recent private appraisal.
- Photos of the property.
- Any other information you believe will assist appraisers in analyzing the property's fair market value.

Documentation/information may be submitted by using the Web site's Online Form, by faxing at 901-379-7197, by mail or by E-mail, or by dropping it off at one of our two convenient locations. Please include your property's parcel identification number for all pieces of documentation submitted.